IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 5TH JULY 2007 / 14TH ASHADHA 1929

WP(C).No. 30859 of 2005(W)

OS.183/2001 of PRL.SUB COURT,IRINJALAKUDA
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PETITIONER:

R.K.L.P. SCHOOL, PAZHAYI,
REP. BY THE MANAGER AND HEADMISTRESS,
SMT.SHERMI C.V., AGED 30, W/O. SHAJU V.P.,
VELLATTUPARAMBIL HOUSE, KODANNUR VILLAGE,
PALLIPURAM P.O., THRISSUR DISTRICT.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENTS:
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1. **THE PAZHAYI SAINT SEBASTIAN R.C. CHURCH,**
   NENMANIKARA VILLAGE, MUKUNDAPURAM TALUK,
   REP. BY VIKAR REV. FATHER ANTONY MECHERY.

2. **TRUSTEE DEVASSY,**
   S/O. KOLAZHIKARAN POULOSE, PAZHAYI DESOM,
   NENMANIKARA VILLAGE, MUKUNDAPURAM TALUK.

3. **TRUSTEE PAULSON,**
   S/O. KOLAZHIKARAN POULOSE, PAZHAYI DESOM,
   NENMANIKARA VILLAGE, MUKUNDAPURAM TALUK.

BY ADV. SRI.N.P.SAMUEL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.30859/2005 W

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE PLAINT IN O.S.NO.183/01 DTD. 7/04/01 ON THE FILE OF THE SUB COURT, IRINJALAKUDA.

EXT.P2: COPY OF THE WRITTEN STATEMENT SUBMITTED BY THE PETITIONER AND OTHERS DTD. 3/06/05.

EXT.P3: COPY OF THE ORDER PASSED BY THE PRINCIPAL SUB COURT, IRINJALAKUDA DTD.22/09/04.

3RD RESPONDENT'S EXHIBITS:

EXT.R3(A): COPY OF THE DECREE IN O.S.NO.207/1971 OF THE MUNSIFF COURT, IRINJALAKUDA DTD. 15/01/1973.

EXT.R3(B): COPY OF DELIVERY RECEIPT OF AUCTION PURCHASER IN E.A.374/76 IN O.S.207/71 DTD. 22/07/1976.

EXT.R3(C): COPY OF AMEIN REPORT DTD. 29/01/80 IN E.A.490/76 IN O.S.207/71 OF THE MUNSIFF COURT, IRINJALAKUDA.

EXT.R3(D): COPY OF LIST OF MOVABLES TAKEN BY COURT AMEIN IN E.A.490/76 IN O.S.207/71 OF THE MUNSIFF COURT, IRINJALAKUDA ON 29/01/80.

EXT.R3(E): COPY OF WRITTEN STATEMENT FILED BY 4TH DEFENDANT IN O.S.183/01 BEFORE THE SUB COURT, IRINJALAKUDA DTD. 15/08/2002.

EXT.R3(F): COPY OF JUDGMENT IN CMA.NO.2/2002 OF THE DISTRICT COURT, THRISSUR DTD. 18/12/03.

EXT.R3(G): COPY OF WRITTEN STATEMENT FILED BY DEFENDANTS 7 TO 9 IN O.S.183/01 OF THE SUB COURT, IRINJALAKUDA DTD. 13/06/2005.

/TRUE COPY/

KSS

PIUS C. KURIAKOSE, J.

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W.P.(C)No.30859 OF 2005

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DATED THIS THE 5th JULY, 2007

J U D G M E N T

Ext.P3 order passed by the learned Subordinate Judge entering findings on issues 1 and 4, i.e., whether the suit is maintainable and whether the plaintiffs have obtained any sanction under Section 6 of the Kerala Education Act for transfer of ownership over the property belonging to the school, is under challenge in this Writ Petition filed by the present Manager and Headmistress of the school.

2. Heard Sri.G.Sreekumar Chelur, learned counsel for the petitioner and Sri.N.P.Samuel, learned counsel for the respondents.

3. Mr.Sreekumar submitted that the petitioner is prepared to concede that the suit is maintainable. But the contention of the petitioner is that the issue as to whether the plaintiffs have obtained sanction under Section 6 of the Act before purchasing the school property is an issue which cannot be decided as a preliminary issue. That is an issue which will require evidence. According to counsel, Ext.P3 findings were entered by the Sub Judge even before the petitioner was impleaded as additional 7th defendant. Thus, in short, the submission is that Ext.P3 is vitiated by violation of principles of natural justice since the petitioner who ought to have been allowed a

say in the matter has not been allowed such say.

4. Sri.N.P.Samuel, learned counsel for the respondents would resist the submissions of Sri.G.Sreekumar. My attention was drawn by Sri.Samuel to the written statement filed by the other defendants in the suit and also to the written statement filed by the present petitioner. The learned counsel would highlight that it is the self-same contentions which are seen raised by the petitioner. The counsel would submit that the issue having been decided by the learned Sub Judge, it is not open to the petitioner to re-agitate the same once again.

5. The issue is apparently decided under the impugned order. But the fact remains that the decision as per the impugned order is taken by the court even before the petitioner was impleaded. It was on an application submitted by the plaintiffs that the petitioner was impleaded. Under these circumstances, I agree with the learned counsel for the petitioner that the petitioner is also entitled for a say before the court gave its verdict on issue No.4, i.e., whether the plaintiffs have obtained any sanction under Section 6 of the Kerala Education Act. I approve the finding of the court below that the suit is maintainable. But I set aside the finding on issue No.4, only on the

ground that the petitioner has not been heard regarding that issue. I direct the court below to take a fresh decision on issue No.4 after hearing the petitioner. Since evidence is already on, it is sufficient that the court takes a decision on issue No.4 along with the other issues in the suit. However, considering the totality of the circumstances attending on this case, I direct that the petitioner, the present Manager and Headmistress of the school shall not make any appointments in the school till such time as the suit is disposed of.

The Writ Petition is disposed of as above.

(PIUS C.KURIAKOSE, JUDGE)

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